

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Rufus Julius C. Anderson,)	C/A No. 8:15-4219-MGL-JDA
)	
Petitioner,)	
)	
vs.)	
)	
Greenville County Detention Center;)	REPORT AND RECOMMENDATION
South Carolina Probation and Parole)	
Services; Director of Greenville County)	
Detention Center,)	
)	
Respondents.)	
)	

Rufus Julius C. Anderson (“Petitioner”), proceeding pro se, brings this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241. At the time this Petition was filed, Petitioner alleged he was detained in the Greenville County Detention Center (“GCDC”) pending a charge of probation violation. He files this action *in forma pauperis* under 28 U.S.C. § 1915. This case is subject to summary dismissal.

BACKGROUND

Petitioner alleges he was detained in the GCDC on a charge of probation violation. [Doc. 13.] He seems to allege that he wrongfully was charged with a probation violation due to retaliation, intimidation, and in violation of double jeopardy. [Doc. 1.] He seeks release from custody. [*Id.*] Also, he alleges that he pled guilty to larceny, failure to return rental property greater than \$10,000, on August 15, 2013, in the Greenville County Court of General Sessions, and he received a sentence of ten years suspended upon service of 79 days with three years probation. [*Id.*] It appears that prior to July 23, 2015, Petitioner was not imprisoned but was on probation related to the larceny conviction. [Doc. 13.]

In his answers to the court's special interrogatories, Petitioner clarified that at the time he filed this habeas action he was charged with a probation violation and had not yet been convicted of it.¹ [Doc. 13.] He seems to allege that he was sentenced on November 1, 2015. [*Id.*]

STANDARD OF REVIEW

Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) DSC, the undersigned is authorized to review such petitions for relief and submit findings and recommendations to the district court. Petitioner filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

Additionally, this Court is charged with screening Petitioner's lawsuit to determine if "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4, Rules Governing Section 2254 Cases in the U.S. District Courts (2012); see *also* Rule 1(b) Rules Governing Section 2254 Cases in the U.S. District Courts (2012) (a district court may apply these rules to a habeas corpus petition not filed pursuant to § 2254).

As a pro se litigant, Petitioner's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v.*

¹Petitioner also submitted a habeas petition pursuant to § 2254 seeking to vacate his 2013 conviction of larceny. This Court directed the Clerk of Court to open a separate § 2254 habeas case on Petitioner's behalf.

Pardus, 551 U.S. 89, 93-94 (2007) (per curiam). However, even under this less stringent standard, the Petition in this case is subject to summary dismissal. The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

DISCUSSION

Ordinarily, federal habeas corpus relief for a state prisoner is available post-conviction. However, pretrial petitions for habeas corpus are properly brought under 28 U.S.C. § 2241, “which applies to persons in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against him.” *United States v. Tootle*, 65 F.3d 381, 383 (4th Cir. 1995) (quoting *Dickerson v. Louisiana*, 816 F.2d 220, 224 (5th Cir. 1987)). Generally though, “an attempt to dismiss an indictment or otherwise prevent a prosecution” is not attainable through federal habeas corpus. *Dickerson*, 816 F.2d at 226 (quoting *Brown v. Estelle*, 530 F.2d 1280 (5th Cir. 1976)).

In *Younger v. Harris*, the Supreme Court held that a federal court should not equitably interfere with state criminal proceedings “except in the most narrow and extraordinary of circumstances.” *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). The *Younger* Court noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. *Younger v. Harris*, 401 U.S. 37, 43-44 (1971); see also *Sprint Commc’ns, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013) (explaining the circumstances when *Younger* abstention is appropriate).

From *Younger* and its progeny, the Court of Appeals for the Fourth Circuit has culled the following test to determine when abstention is appropriate: “(1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal claims in the state proceedings.” *Martin Marietta Corp. v. Maryland Comm’n on Human Relations*, 38 F.3d 1392, 1396 (4th Cir. 1994) (citing *Middlesex County Ethics Comm’n v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982)).

Here, at the time Petitioner filed this action he alleged he was involved in ongoing state criminal proceedings—he faced a charge of probation violation. The second criterion has been addressed by the Supreme Court: “[T]he States’ interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief.” *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). The Court also decided the third criterion in noting “that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.” *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996) (quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)).

This Court finds that Petitioner should have adequate opportunity to raise his federal constitutional rights in the state trial and post-trial proceedings. Petitioner does not allege any extraordinary circumstances to show that pretrial intervention would be appropriate. Because Petitioner can pursue his claims in state court both during and after trial related to probation proceedings, he fails to show that he has no adequate remedy at law and will suffer irreparable injury. See *Younger*, 401 U.S. at 43-44. Petitioner is, therefore, precluded from federal habeas relief at this time, and his Petition should be dismissed.

On the other hand, if this action is construed as a § 2254 action seeking to vacate his recent probation violation, assuming that Petitioner now has been convicted of violating probation, it should still be dismissed because Petitioner has not yet exhausted his state court remedies. With respect to his probation conviction and sentence, Petitioner may seek a writ of habeas corpus under 28 U.S.C. § 2254 only after he has exhausted his state court remedies. See 28 U.S.C. § 2254(b); *Woodford v. Ngo*, 548 U.S. 81, 92 (2006) (noting that a “state prisoner is generally barred from obtaining federal habeas relief unless the prisoner has properly presented his or her claims through one ‘complete round of the State’s established appellate review process’”). To exhaust state court remedies in South Carolina, a direct appeal may be pursued. See *State v. Northcutt*, 641 S.E.2d 873 (S.C. 2007). If a direct appeal was filed and is ultimately unsuccessful (or if no direct appeal was filed), a petitioner may file an application for post-conviction relief (“PCR”) in a court of common pleas. See S.C. Code Ann § 17-27-10 *et seq.* (1976); see also *Miller v. Harvey*, 566 F.2d 879, 880-81 (4th Cir. 1977) (noting that South Carolina’s Uniform Post-Conviction Procedure Act is a viable state court remedy). If a South Carolina prisoner’s PCR application is denied or dismissed by a court of common pleas, a petitioner can file a request for writ of certiorari with a South Carolina appellate court. See S.C. Code Ann § 17-27-100 (1976); *Knight v. State*, 325 S.E.2d 535 (S.C. 1985).

In this case, Petitioner does not allege that he filed in state court a direct appeal or PCR action related to his probation violation judgment. Thus, this action also should be dismissed for failure to exhaust state remedies. And, this Court should not keep this case

on its docket while Petitioner is exhausting his state remedies.² See *Galloway v. Stephenson*, 510 F. Supp. 840, 846 (M.D.N.C. 1981) (“When state court remedies have not been exhausted, absent special circumstances, a federal habeas court may not retain the case on its docket, pending exhaustion, but should dismiss the petition.”).

RECOMMENDATION

It is recommended that this action be dismissed without prejudice and without requiring the Respondent to file an answer or return. **Petitioner’s attention is directed to the important notice on the next page.**

December 10, 2015
Greenville, South Carolina

S/Jacquelyn D. Austin
United States Magistrate Judge

²There are specific time limitations for filing a habeas action in this federal court pursuant to 28 U.S.C. § 2254. See 28 U.S.C. § 2244(d).

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).